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Attorneys for Defendant
MODERN VETERINARY THERAPEUTICS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABAXIS, INC., a California Corporation and
ALERE SWITZERLAND GMBH, a
Switzerland Entity

Plaintiff,

v.

MODERN VETERINARY
THERAPEUTICS, LLC, a Florida
Corporation

Defendants.

Case No. 3:10-cv-04549 WHA

~~PROPOSED~~ FINAL CONSENT JUDGMENT

1 Upon the joint motion of all the parties, and for good cause shown, it is hereby
2 ORDERED, ADJUDGED and DECREED that:

3 1. The defendant Modern Veterinary Therapeutics, LLC (“MVT”) and its successors
4 and assigns, and each of their respective officers, directors, agents, servants, employees and
5 attorneys, and all other persons who are in active concert or participation with any of them are
6 hereby permanently restrained and enjoined: (a) from making, using, selling, offering to sell, and
7 importing; (b) from actively inducing any other person or entity in making, using, selling,
8 offering to sell, and importing; and (c) from offering to sell, selling within the United States, or
9 importing into the United States a material or apparatus that is not a staple article or commodity
10 of commerce suitable for substantial non-infringing uses, and knowing the same to be especially
11 made or especially adapted for use in any procedure, process or method or test corresponding to
12 any tests that MVT has designated as Rapid Canine Heartworm Antigen Test Kit, or any
13 equivalent thereof, including without limitation any combinations of tests that include any of the
14 foregoing until such time as each and every claim of U.S. Patents Nos. 5,714,389 and 6,485,982
15 B1 expire, are abandoned, or are held invalid or unenforceable in a final judgment by any court
16 with jurisdiction over the subject matter thereof and from which all rights to appeal have been
17 exhausted or expired. Nothing contained herein, however, shall be construed to prohibit MVT
18 from making, using, selling, offering for sale, or importing such tests or the equivalents thereof in
19 the event that MVT lawfully obtains the tests, their equivalents, or the component parts thereof
20 from another who has the legal right to make, use, sell, offer for sale, or import such tests or their
21 equivalents.
22

23 2. MVT, for and on behalf of itself and its successors and assigns, acknowledges the
24 validity and enforceability of U.S. Patents Nos. 5,714,389 and 6,485,982 B1 and waives the right
25 to challenge the validity or enforceability of said patents.
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3. The Court retains jurisdiction of this action for purposes of enforcement of the provisions of this Final Consent Judgment. **for a period of three years.**

4. Except as otherwise set forth in this Final Consent Judgment, this action and all claims and counterclaims asserted herein are dismissed **WITH PREJUDICE** and without an award of costs or attorney fees to any party.

This entry terminates this action. **THE CLERK SHALL CLOSE THE FILE.**

Dated: April 13, 2011

COOLEY LLP

By: /s/ Ricardo Rodriguez
Ricardo Rodriguez

Attorneys for Plaintiff Abaxis, Inc.

Dated: April 13, 2011

GOODWIN PROCTER LLP

By: /s/ Lana S. Shiferman
Lana S. Shiferman

Attorneys for Plaintiff Alere Switzerland GmbH.

Dated: April 13, 2011

POLSINELLI SHUGHART PC

by: /s/ Graham L.W. Day (with permission)
Graham L.W. Day (Bar No. 186553)

Attorneys for Defendant Modern Veterinary Therapeutics, LLC

SO ORDERED.

Dated: April 14, 2011.

